

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 297
97TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, March 28, 2013, with recommendation that the Senate Committee Substitute do pass.

1352S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 393.320, 393.760, 393.1000, and 393.1003, RSMo, and to enact in lieu thereof four new sections relating to ratemaking for water utilities.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 393.320, 393.760, 393.1000, and 393.1003, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 393.320, 393.760, 393.1000, and 393.1003, to read as follows:

393.320. 1. As used in this section, the following terms mean:

2 (1) "Large water public utility", a public utility that regularly provides
3 water service or sewer service to more than eight thousand customer connections
4 and that provides safe and adequate service but shall not include a sewer district
5 established under Section 30(a), Article VI of the Missouri Constitution, sewer
6 districts established under the provisions of chapter 204, 249, or 250, public
7 water supply districts established under the provisions of chapter 247, or
8 municipalities that own water or sewer systems;

9 (2) "Small water utility", a public utility that regularly provides water
10 service or sewer service to eight thousand or fewer customer connections; a water
11 district established under the provisions of chapter 247 that regularly provides
12 water or sewer service to eight thousand or fewer customer connections; a sewer
13 district established under the provisions of chapter 204, 249, or 250 that regularly
14 provides sewer service to eight thousand or fewer customer connections; or a
15 water system or sewer system owned by a municipality that regularly provides
16 water service or sewer service to eight thousand or fewer customer connections;
17 and all other entities that regularly provide water service or sewer service to

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 eight thousand or fewer customer connections.

19 2. The procedures contained in this section may be chosen by a large
20 water public utility, and if so chosen shall be used by the public service
21 commission to establish the ratemaking rate base of a small water utility during
22 an acquisition.

23 3. (1) An appraisal shall be performed by three appraisers. One
24 appraiser shall be appointed by the small water utility, one appraiser shall be
25 appointed by the large water public utility, and the third appraiser shall be
26 appointed by the two appraisers so appointed. Each of the appraisers shall be a
27 disinterested person who is a certified general appraiser under chapter 339.

28 (2) The appraisers shall:

29 (a) Jointly prepare an appraisal of the fair market value of the water
30 system and/or sewer system. The determination of fair market value shall be in
31 accordance with Missouri law and with the Uniform Standards of Professional
32 Appraisal Practice; and

33 (b) Return their appraisal, in writing, to the small water utility and large
34 water public utility in a reasonable and timely manner.

35 (3) If all three appraisers cannot agree as to the appraised value, the
36 appraisal, when signed by two of the appraisers, constitutes a good and valid
37 appraisal.

38 4. Nothing in this section shall prohibit a party from declining to proceed
39 with an acquisition or be deemed as establishing the final purchase price of an
40 acquisition.

41 5. (1) The lesser of the purchase price or the appraised value, together
42 with the reasonable and prudent transaction, closing, and transition costs
43 incurred by the large water public utility, shall constitute the ratemaking rate
44 base for the small water utility as acquired by the acquiring large water public
45 utility; provided, however, that if the small water utility is a public utility subject
46 to chapter 386 and the small water utility completed a rate case prior to the
47 acquisition, the public service commission may select as the ratemaking rate base
48 for the small water utility as acquired by the acquiring large water public utility
49 a ratemaking rate base in between:

50 (a) The lesser of the purchase price or the appraised value, together with
51 the reasonable and prudent transaction, closing, and transition costs incurred by
52 the large water public utility unless such transaction, closing, and transition
53 costs are elsewhere recoverable in rates; and

54 (b) The ratemaking rate base of the small water utility as ordered by the
55 public service commission in the small water utility's last previous rate case as
56 adjusted by improvements and depreciation reserve since the previous rate case
57 together with the transaction, closing, and transition costs incurred by the large
58 water public utility unless such transaction, closing, and transition costs are
59 elsewhere recoverable in rates. If the small water utility and large water public
60 utility proceed with the sale, any past-due fees due to the state from the small
61 water utility or its customers under chapter 640 or 644 shall be resolved prior to
62 the transfer of ownership or the liability for such past-due fees becomes the
63 responsibility of the large water public utility. Such fees shall not be included in
64 the large water public utility's rate base.

65 (2) The public service commission shall issue its decision establishing the
66 ratemaking rate base of the small water utility in its order approving the
67 acquisition.

68 **6. Upon the date of the acquisition of a small water utility by a**
69 **large water public utility, whether or not the procedures for**
70 **establishing ratemaking rate base provided by this section have been**
71 **utilized, the small water utility shall, for ratemaking purposes, become**
72 **part of an existing service area, as defined by the public service**
73 **commission, of the acquiring large water public utility that is either**
74 **contiguous to the small water utility, the closest geographically to the**
75 **small water utility, or best suited due to operational or other**
76 **factors. This consolidation shall be approved by the public service**
77 **commission in its order approving the acquisition.**

78 **7.** Any new permit issued pursuant to chapters 640 and 644, when a small
79 water utility is acquired by a large water public utility, shall include a plan to
80 resolve all outstanding permit compliance issues. After the transfer of ownership,
81 the acquiring large public water utility shall continue providing service to all
82 customers that were served by the small water utility at the time of sale.

83 **[7.] 8.** This section is intended for the specific and unique purpose of
84 determining the ratemaking rate base of small water utilities and shall be
85 exclusively applied to large water public utilities in the acquisition of a small
86 water utility. This section is not intended to apply beyond its specific purpose
87 and shall not be construed in any manner to apply to electric corporations,
88 natural gas corporations, or any other utility regulated by the public service
89 commission.

393.760. 1. Each participating municipality shall, in accordance with the provisions of chapter 115, order an election to be held whereby the qualified electors in such participating municipality shall approve or disapprove the issuance of its bonds to finance its individual interest in the project. The participating municipality may not order such an election until it has received a report from an independent consulting engineer as defined in section 327.181 for the purpose of determining the economic and engineering feasibility of any proposed project the costs of which are to be financed through the issuance of bonds. The report of the consulting engineer shall be provided to and approved by the legislative body and executive of each such participating municipality and such report shall be open to public inspection and shall be the subject of a public hearing in each participating municipality. Notice of the time and place of each such hearing shall be published in a daily newspaper of general circulation within each such participating municipality. Interested parties may appear and fully participate in such hearings.

2. Each participating municipality shall notify the election authority or authorities responsible for conducting elections within such participating municipality in accordance with chapter 115.

3. The question shall be submitted in substantially the following form:

OFFICIAL BALLOT

Shall (name of participating municipality) issue its (type) revenue bonds in an amount not to exceed \$..... for the purpose of paying its share of the cost of participating in (describe project)?

☐ YES ☐ NO

If you are in favor of the resolution, place an "X" in the box opposite "Yes".

If you are opposed to the question, place an "X" in the box opposite "No".

4. If the issuance of the bonds is approved by at least a majority of the qualified electors voting thereon in the participating municipality, the participating municipality shall declare the result of the election and cause the bonds to be issued.

5. Each participating municipality shall bear all expenses associated with the elections in such participating municipality.

6. In [lieu of the public voting procedure set forth in subsections 1 to 5 of this section, in] the case of purchasing or leasing, constructing, installing, and operating reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, wholesale distribution,

37 and utilization of water, the commission may provide for a vote by the governing
38 body of each contracting municipality. Such vote shall require the approval of
39 three-quarters of all governing bodies of the contracting municipalities. The
40 commission may not order such a vote until it has engaged and received a report
41 from an independent consulting engineer as defined in section 327.181 for the
42 purpose of determining the economic and engineering feasibility of any proposed
43 project the costs of which are to be financed through the issuance of bonds. The
44 report of the consulting engineer shall be provided to and approved by the
45 legislative body and executive of each contracting municipality participating in
46 the project and such report shall be open to public inspection and shall be the
47 subject of a public hearing in each municipality participating in the
48 project. Notice of the time and place of each such hearing shall be published in
49 a daily newspaper of general circulation within each municipality. Interested
50 parties may appear and fully participate in such hearings. Each contracting
51 municipality shall vote by ordinance or resolution and such ordinance or
52 resolution shall approve the issuance of revenue bonds by the joint municipal
53 water commission in an amount not to exceed a specified amount.

393.1000. As used in sections 393.1000 to 393.1006, the following terms
2 mean:

3 (1) "Appropriate pretax revenues", the revenues necessary to produce net
4 operating income equal to:

5 (a) The water **or sewer** corporation's weighted cost of capital multiplied
6 by the net original cost of eligible infrastructure system replacements, including
7 recognition of accumulated deferred income taxes and accumulated depreciation
8 associated with eligible infrastructure system replacements which are included
9 in a currently effective ISRS; and

10 (b) Recover state, federal, and local income or excise taxes applicable to
11 such income; and

12 (c) Recover all other ISRS costs;

13 (2) "**Base revenues**", **revenues produced through a general rate**
14 **case proceeding**;

15 (3) "Commission", the Missouri public service commission;

16 [(3)] (4) "Eligible infrastructure system replacements"[,];

17 (a) Water **or sewer** utility plant projects that:

18 [(a)] a. Replace or extend the useful life of existing infrastructure;

19 [(b)] b. Are in service and used and useful;

20 [(c)] **c.** Do not increase revenues by directly connecting the infrastructure
21 replacement to new customers; and

22 [(d)] **d.** Were not included in the water **or sewer** corporation's rate base
23 in its most recent general rate case; **or**

24 **(b) Energy efficiency projects that:**

25 **a. Are in service and used and useful;**

26 **b. Do not increase revenues by directly connecting the**
27 **infrastructure replacements to new customers; and**

28 **c. Were not included in the water or sewer corporation's rate**
29 **base in its most recent general rate case;**

30 [(4)] **(5) "Energy efficiency", measures that reduce the amount of**
31 **energy required to achieve a given end result;**

32 **(6) "ISRS", infrastructure system replacement surcharge;**

33 [(5)] **(7) "ISRS costs", depreciation expenses and property taxes that will**
34 **be due within twelve months of the ISRS filing. Depreciation expense on**
35 **eligible infrastructure system capital investments shall not begin to be**
36 **recorded on a utility's books until it is included in ISRS revenues or**
37 **base revenues;**

38 [(6)] **(8) "ISRS revenues", revenues produced through an ISRS, exclusive**
39 **of revenues from all other rates and charges;**

40 **(9) "Sewer corporation", every corporation, company, association,**
41 **joint stock company or association, partnership, and person, their**
42 **lessees, trustees, or receivers appointed by any court whatsoever,**
43 **owning, operating, controlling, or managing any plant or property, for**
44 **the collection, carriage, treatment, or disposal of sewage anywhere**
45 **within the state for gain;**

46 [(7)] **(10) "Water corporation", every corporation, company, association,**
47 **joint stock company or association, partnership, and person, their lessees,**
48 **trustees, or receivers appointed by any court whatsoever, owning, operating,**
49 **controlling, or managing any plant or property, dam or water supply, canal, or**
50 **power station, distributing or selling for distribution, or selling or supplying for**
51 **gain any water [to more than ten thousand customers];**

52 [(8)] **(11) "Water or sewer utility plant projects" may consist only of the**
53 **following:**

54 **(a) Mains, [and associated] valves [and], hydrants, service lines, and**
55 **meters, collecting sewers (including force lines, gravity sewers,**

56 **interceptors, laterals, trunk sewers, manholes, lampholes, and**
57 **necessary appurtenances, including service wyes), lift stations, and**
58 **pressure pumps** installed as replacements for existing facilities that have worn
59 out or are in deteriorated condition **or replaced as part of a commission**
60 **order, or the replacement of any of the forms of plant utility named in**
61 **this paragraph with improved technology;**

62 (b) Main **and collecting sewer** cleaning and relining projects; [and]

63 (c) Facilities relocations required due to construction or improvement of
64 a highway, road, street, public way, or other public work by or on behalf of the
65 United States, this state, a political subdivision of this state, or another entity
66 having the power of eminent domain provided that the costs related to such
67 projects have not been reimbursed to the water **or sewer** corporation; **and**

68 **(d) Energy efficiency projects.**

393.1003. 1. Notwithstanding any provisions of chapter 386, RSMo, and
2 this chapter to the contrary, as of August 28, [2003] **2013**, a water **or sewer**
3 corporation [providing water service in a county with a charter form of
4 government and with more than one million inhabitants] may file a petition and
5 proposed rate schedules with the commission to establish or change ISRS rate
6 schedules that will allow for the adjustment of the water **or sewer** corporation's
7 rates and charges to provide for the recovery of costs for eligible infrastructure
8 system replacements [made in such county with a charter form of government
9 and with more than one million inhabitants;], provided that an ISRS, on an
10 annualized basis, must produce ISRS revenues of at least one million dollars but
11 not in excess of ten percent of the water corporation's base revenue level approved
12 by the commission in the water **or sewer** corporation's most recent general rate
13 proceeding **for a water or sewer corporation, or ten percent of a small**
14 **sewer corporation or small water corporation's base revenue as defined**
15 **in section 393.146.** An ISRS and any future changes thereto shall be calculated
16 and implemented in accordance with the provisions of sections 393.1000 to
17 393.1006. ISRS revenues shall be subject to refund based upon a finding and
18 order of the commission, to the extent provided in subsections 5 and 8 of section
19 393.1006.

20 2. The commission shall not approve an ISRS for a water **or sewer**
21 corporation [in a county with a charter form of government and with more than
22 one million inhabitants] that has not had a general rate proceeding decided or
23 dismissed by issuance of a commission order within the past three years, unless

24 the water **or sewer** corporation has filed for or is the subject of a new general
25 rate proceeding **or has instead used the commission's small company rate**
26 **request process.**

27 3. In no event shall a water **or sewer** corporation collect an ISRS for a
28 period exceeding three years unless the water **or sewer** corporation has filed for
29 or is the subject of a new general rate proceeding; provided that the ISRS may be
30 collected until the effective date of new rate schedules established as a result of
31 the new general rate proceeding, or until the subject general rate proceeding is
32 otherwise decided or dismissed by issuance of a commission order without new
33 rates being established.

Unofficial ✓

Bill

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